IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.203 OF 2006

M/s Tankrete India Ltd. ...Petitioners

v/s

Union of India and others ...Respondents

Mr S.U. Kamdar i/b Mr U.S. Samudrala for Petitioners.

Mr S.C. Dhawan for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 15TH NOVEMBER 2006.

P.C. :-

1. By this petition, filed under section 34 of the Arbitration and Conciliation Act 1996, the interim award made by he learned Arbitrator is challenged. By that award, the learned Arbitrator has issued two directions to the petitioners. The first direction is for return of 39,192 inserts alongwith relevant inspection certificates to the respondents. This direction is not challenged in this petition. The second direction is for return of 110.525 MTs of HTS wire alongwith relevant inspection certificates, which is shown as balance as acknowledged by the petitioners on 14th December 2004 or if the wire is not available, then cost of the wire at current price. It is this direction which is challenged.

2. According to the petitioners, the petitioners do not dispute that this wire was received by them from the Central Railway. It is also not the claim of the petitioners that this wire has been utilised by the petitioners for the work of Central Railway. The case of the petitioners is that the petitioners had to fulfil the contract awarded by the Central Railway as also by the Western Railway, at that time, there was shortage of HTS wire and therefore, the Railway Board had authorised

them to utilise this wire for the work of the Western Railway. It is also the claim of the petitioners that in the arbitration proceedings going on between them and the Western Railway, the Western Railway has made a counter statement of claim for the cost of this wire. According to the petitioners therefore, this interim award could not have been made. Now, in view of the admitted position that the wire was received by the petitioners from the Central Railway and that the petitioners have not utilised the wire for the work of the Central Railway, only if the petitioners show to the satisfaction of the Arbitrator that the wire was utilised by them for the work of Western Railway as claimed by them either with the consent of the Central Railway or under the orders of the Railway Board, then only the petitioners can successfully challenge the direction. It is not even the case of the petitioners that the Central Railway gave consent at any time for them to use the wire for the work of the Western Railway. It appears from their reply that their defence was that this wire was permitted to be utilised by them for the work of the Western Railway by the Railway Board. The learned counsel appearing for petitioners stated that he is not in a position to state whether the order issued by the Railway Board authorising the petitioners to use the wire for the work of Western Railway was produced by the petitioners before the

learned Arbitrator or not, but the learned counsel appearing for respondents has made a categorical statement before me that no such order was produced by the petitioners. In the communication dated 29th September 2005, the petitioners in paragraph 2 have stated that the Railway Board directed the petitioners to use the wire for the work of the Western Railway. Therefore, the only way in which the petitioners could have successfully resisted the claim of the Central Railway in this regard is by producing necessary order passed by the Railway Board. It is stated by the learned counsel appearing for respondents that no such order was produced by the petitioners. Therefore, no fault can be found with the direction issue by the learned Arbitrator. So far as the submission that there is a counter claim made by the Western Railway is concerned, even assuming that such a counter claim is made by the Western Railway, in case the petitioners comply with the interim award made by the learned Arbitrator, which is impugned, they can definitely produce the proof before the learned Arbitrator in the arbitration proceedings between the petitioners and the Western Railway as a defence. In my opinion, the interim award made by the learned Arbitrator which is impugned in the petition cannot be faulted. The petition has no substance, it fails. The petitioners are directed to pay costs of this petition to the

respondents as incurred by the respondents.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.